

Loan/Project No. «Loan_No»

ENVIRONMENTAL FACILITIES AGREEMENT

by and between

«BORROWER_NAME»

and

«PUBLIC_BODY_NAME»

Dated _____

SPECIMEN - FOR AUTHORITIES ONLY

ENVIRONMENTAL FACILITIES AGREEMENT

THIS ENVIRONMENTAL FACILITIES AGREEMENT (this “**Contract**”) dated _____, by and between «**BORROWER_NAME**», a Georgia authority (the “**Borrower**”), whose address for purposes of this Agreement shall be «**BORROWER_ADDRESS**», and «**PUBLIC_BODY_NAME**», a Georgia public body corporate and politic (the “**Public Body**”), whose address for purposes of this Agreement shall be «**PUBLIC_BODY_ADDRESS**».

WHEREAS, the Borrower desires to borrow \$«**Loan Amount**» from the «**LENDER_NAME**» (the “**Lender**”) to finance the costs of acquiring, constructing, and installing additions, extensions, or improvements to the Borrower’s environmental facilities, pursuant to the terms of a Loan Agreement (the “**Loan Agreement**”), dated the date hereof, between the Borrower and the Lender, a fully executed copy of which has been delivered to the Public Body; and

WHEREAS, the Borrower’s obligation to repay the loan made pursuant to the Loan Agreement is evidenced by a Promissory Note (the “**Note**”), dated the date hereof, by the Borrower to the Lender, a fully executed copy of which has been delivered to the Public Body; and

WHEREAS, Article IX, Section III, Paragraph I(a) of the Constitution of the State of Georgia of 1983 authorizes any county or municipality of the State of Georgia to contract for any period not exceeding fifty years with any public corporation or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, if such contract deals with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide; and

WHEREAS, the Borrower and the Public Body are authorized by law to undertake or provide environmental facilities and services; and

WHEREAS, the Borrower and the Public Body propose to enter into this Contract, under the terms of which (1) the Borrower will agree to operate its environmental facilities as public environmental facilities and to make its environmental facilities and services available to residents of the Public Body, and (2) the Public Body will agree (a) to make payments to the Borrower in amounts sufficient to enable the Borrower to pay when due the principal of and interest on the Note, to the extent the Borrower has insufficient funds for such purposes, and (b) to levy an annual ad valorem tax on all taxable property located within the territorial or corporate limits of the Public Body, within any limitation that may be prescribed by law, as may be necessary to produce in each year revenues that are sufficient to fulfill the Public Body’s obligations under this Contract; and

WHEREAS, to secure its obligation to pay principal of and interest on the Note, the Borrower proposes to assign and pledge, and grant a first priority lien on, its right, title, and interest in this Contract and the payments to be received by the Borrower

pursuant to this Contract to the Lender, pursuant to the terms of an Assignment and Security Agreement (the “**Assignment**”), to be dated the date hereof, between the Borrower and the Lender;

NOW, THEREFORE, in consideration of the respective covenants, representations, and agreements hereinafter contained and in furtherance of the mutual public purposes hereby sought to be achieved, the Borrower and the Public Body agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Certain words and terms used in this Contract shall have the meaning given them in the Loan Agreement, which by this reference are incorporated herein.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the Borrower. The Borrower makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Borrower is authorized to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder, has been duly authorized to execute and deliver this Contract, and will do or cause to be done all things necessary to preserve and keep in full force and effect its status and existence.

(b) The issuance of the Note, the execution and delivery of this Contract and the Loan Agreement, and the performance of all covenants and agreements of the Borrower contained in this Contract, the Note, and the Loan Agreement and of all other acts and things required under the Constitution and laws of the State of Georgia to make this Contract, the Note, and the Loan Agreement the valid and binding obligations of the Borrower in accordance with their respective terms are authorized by law and have been duly authorized by proceedings of the Borrower adopted at public meetings duly and lawfully called and held.

(c) There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against the Borrower that have or could have a material adverse effect on the right of the Borrower to execute this Contract, the Note, or the Loan Agreement or the ability of the Borrower to comply with any of its obligations under this Contract, the Note, and the Loan Agreement.

Section 2.2. Representations by the Public Body. The Public Body makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Public Body is a public body corporate and politic duly created and validly existing under the laws of the State of Georgia, having the power to enter into and carry out its obligations under this Contract, and, by proper action of its governing body, has authorized the execution and delivery of this Contract and the taking of any and all such actions as may be required on its part to carry out, give effect to, and consummate the transactions contemplated by this Contract, and no approval or other action by any governmental authority, agency, or other person is required in connection with the delivery and performance of this Contract by it except as shall have been obtained as of the date hereof.

(b) This Contract has been duly executed and delivered by the Public Body and constitutes the legal, valid, and binding obligation of the Public Body enforceable in accordance with its terms, except as enforcement may be limited by the application of equitable principles.

(c) The authorization, execution, delivery, and performance by the Public Body of this Contract and compliance by the Public Body with the provisions hereof do not violate the Constitution or the statutes of the State of Georgia relating to the Public Body or constitute a breach of or a default under any other law, court order, administrative regulation, or legal decree, or any agreement or other instrument to which it is a party or by which it is bound.

(d) There is no litigation or proceeding pending, or to the knowledge of the Public Body threatened, against the Public Body or any other person that have or could have a material adverse effect on the right of the Public Body to execute this Contract or its ability to comply with any of its obligations under this Contract or that involve the possibility of materially and adversely affecting the properties, activities, prospects, profits, operations, or condition (financial or otherwise) of the Public Body.

(e) The Public Body has furnished to the Borrower and the Lender (1) a certified copy of the resolution adopted by the Public Body's governing body, substantially in the form of Exhibit A attached hereto, and (2) a signed opinion of counsel to the Public Body, substantially in the form of Exhibit B attached hereto.

ARTICLE III

THE LOAN AND THE PROJECT; OPERATION OF THE ENVIRONMENTAL FACILITIES

Section 3.1. Agreement to Obtain the Loan. The Borrower agrees that it shall obtain the Loan in order to finance the costs of acquiring, constructing, and installing the Project.

Section 3.2. Completion of the Project. The Borrower hereby agrees to promptly complete the acquisition, construction, and installation of the Project, all in accordance or substantially in accordance with the Plans and Specifications.

Section 3.3. Disbursement of Advances under and in Compliance with the Loan Agreement. Each Advance shall be disbursed and used for the purposes, and in accordance with the terms and conditions, set forth in the Loan Agreement.

Section 3.4. Operation of Environmental Facilities. The Borrower hereby agrees during the term hereof to operate its environmental facilities as public environmental facilities, making the facilities and the services of its environmental facilities available to public and private consumers and users located within its corporate or territorial limits and its environs, all for the benefit of the citizens of the Public Body. The Borrower hereby agrees to operate and maintain its environmental facilities for the benefit of the citizens of the Public Body, for and in consideration of the payments to be received from the Public Body as set forth in Section 4.2 hereof and in accordance with the provisions of this Contract.

ARTICLE IV

TERM; PAYMENT PROVISIONS; OBLIGATIONS ABSOLUTE AND UNCONDITIONAL

Section 4.1. Term. The term of this Contract shall commence with the execution and delivery hereof and shall extend until the principal of and interest on the Note have been paid in full, but in no event shall the term hereof exceed fifty years from the date hereof.

Section 4.2. Payments. (a) To the extent the Borrower has insufficient funds to enable the Borrower to pay the principal of and interest on the Note, as the same becomes due and payable (as determined in accordance with subsection (e) below), the Public Body hereby covenants and agrees to pay to the Borrower on the date of any scheduled payment of principal of or interest on the Note, until the principal of and interest on the Note shall have been paid in full, a sum equal to the amount that will be sufficient, when added to the Borrower's funds available for such purpose, to pay the amounts payable on such dates as principal of and interest on the Note. The payments required to be made by the Public Body to the Borrower pursuant to the provisions of this Section 4.2(a) shall be used by the Borrower solely to provide for the payment of principal of and interest on the Note as the same becomes due and payable. All payments received by the Borrower under the provisions of this Section 4.2(a) shall not be commingled with any other funds of the Borrower and shall be received in trust so as to assure the availability of moneys to the Borrower in order to enable the Borrower to pay the principal of and interest on the Note as the same becomes due and payable.

(b) As security for the payments required by Section 4.2(a) hereof, the Public Body hereby pledges to the Borrower its full faith and credit and taxing power for such payments. The Public Body covenants that, in order to make any payments required by Section 4.2(a) hereof when due from its general funds to the extent required hereunder, the Public Body will exercise its powers of taxation to the extent necessary to pay the amount of the payments required hereunder and will make available and use for such payments all taxes levied and collected for that purpose together with funds received from any other sources. The Public Body further covenants and agrees that in order to make funds available for such purpose in each fiscal year, it will, to the extent necessary, in its general revenue, appropriation, and budgetary measures through which its tax funds or revenues and the allocation thereof are controlled or provided for, include sums sufficient to satisfy any such payments, whether or not any other sums are included in such measure, until all payments so required to be made hereunder shall have been made in full. The obligation of the Public Body to make the payments required to be made hereunder from its general funds shall constitute a general obligation of the Public Body and a pledge of the full faith and credit of the Public Body to provide the funds required to fulfill any such obligation. In the event for any reason any such provision or appropriation is not made as provided in this Section 4.2(b), then the fiscal officers of the Public Body are hereby authorized and directed to set up as an appropriation on their accounts in the appropriate fiscal year the amounts required to pay the obligations that may be due from the general funds of the Public Body. The amount of such appropriation shall be due and payable and shall be expended for the purpose of paying any such obligations, and such appropriation shall have the same legal status as if the Public Body had included the amount of the appropriation in its general revenue, appropriation, and budgetary measures, and the fiscal officers of the Public Body shall make such payments as are required to be made hereunder if for any reason the payment of such obligations shall not otherwise have been made.

(c) The Public Body covenants and agrees that it shall, to the extent necessary, levy an annual ad valorem tax on all taxable property located within the corporate or territorial limits of the Public Body, as now existent and as the same may hereafter be extended, at such rate or rates, within any limitation that may be prescribed by law, as may be necessary to produce in each year revenues that will be sufficient to fulfill the Public Body's obligations to make any such payments required to be made by the Public Body hereunder, from which revenues the Public Body agrees to appropriate sums sufficient to pay in full when due all of the Public Body's obligations to make any such payments. Nothing herein contained, however, shall be construed as limiting the right of the Public Body to make the payments required to be made by the Public Body out of any funds lawfully available to it for such purpose, from whatever source derived (including general funds).

(d) Not less than five (5) days prior to the date of any scheduled payment of principal of or interest on the Note, the Borrower shall determine the amount of funds then on hand and available for payment of principal of and interest on the Note, and shall notify the Public Body of the amounts so on hand and available for such payment

of the Note and the extent of the obligation of the Public Body to make the payments required to be made by the Public Body hereunder.

(e) The payments to be made to the Borrower by the Public Body under the provisions of this Contract shall be made directly to the Lender for the account of the Borrower.

Section 4.3. Obligations of Public Body Hereunder Absolute and Unconditional. The obligations of the Public Body to make the payments provided for herein and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim it may otherwise have against the Borrower. Until such time as the Note is paid in full, the Public Body (i) shall not withhold, suspend, abate, reduce, abrogate, diminish, postpone, modify, or discontinue the payments provided for herein, (ii) shall perform and observe all of its other agreements contained in this Contract, and (iii) shall not terminate the term of this Contract or its obligations hereunder for any contingency, act of God, event, or cause whatsoever, including, without limiting the generality of the foregoing, failure of the Borrower to complete the Project, failure of the Borrower to operate or use its environmental facilities as contemplated in this Contract or otherwise, any change or delay in the time of availability of the Borrower's environmental facilities, any acts or circumstances that may impair or preclude the use or possession of the Borrower's environmental facilities, any defect in the title, design, operation, merchantability, fitness, or condition of the Borrower's environmental facilities or in the suitability of the Borrower's environmental facilities for the Borrower's purposes or needs, failure of the Borrower's title in and to the Borrower's environmental facilities or any part thereof, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Borrower's environmental facilities, the taking by eminent domain of title to or the use of all or any part of the Borrower's environmental facilities, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Georgia or any political subdivision of either, any declaration or finding that the Note or the Loan Agreement is unenforceable or invalid, the invalidity of any provision of this Contract, or any failure of the Borrower to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Contract or the Loan Agreement. Nothing contained in this Section shall be construed to release the Borrower from the performance of any of the agreements on its part contained herein. If the Borrower should fail to perform any such agreement, the Public Body may institute such action against the Borrower as the Public Body may deem necessary to compel performance or recover its damages for nonperformance as long as such action shall not do violence to or adversely affect the agreements on the part of the Public Body contained in this Contract and to make the payments specified herein. The Borrower hereby agrees that it shall not take or omit to take any action that would cause this Contract to be terminated. The Public Body may, however, at its own cost and expense and in its own name or in the name of the Borrower, prosecute or defend any action or proceeding or take any other action involving third persons that the Public

Body deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Borrower hereby agrees to cooperate fully with the Public Body and to take all action necessary to effect the substitution of the Public Body for the Borrower in any such action or proceeding if the Public Body shall so request.

Section 4.4. Enforcement of Obligations. The obligation of the Public Body to make payments required hereunder may be enforced by (i) the Borrower, (ii) the Lender under the Assignment, in accordance with the applicable provisions of the Assignment, or (iii) such receiver or receivers as may be appointed pursuant to applicable law. It is understood and agreed that the Borrower will assign and pledge its right, title, and interest in this Contract and the payments to be received by it under this Contract to secure the Note pursuant to the Assignment, and the Public Body hereby consents to such assignment and pledge pursuant to the Assignment. The Lender is deemed to be and is a third party beneficiary of the representations, covenants, and agreements of the Public Body herein contained.

Section 4.5. No Set-Off. No breach, default, or failure by the Borrower to comply with the provisions of this Contract shall permit an abatement or reduction in or setoff against the payments due from the Public Body hereunder. Nothing in this Contract shall otherwise impair, diminish, or affect any other right or remedy available to the Public Body (i) as a result of the Borrower's breach, default, or failure under this Contract, or (ii) to enforce the obligations of the Borrower under this Contract. No dispute or litigation between the Borrower and the Public Body with respect to this Contract shall affect any party's duties to perform its obligations or its rights or remedies while such dispute or litigation is pending.

ARTICLE V

SPECIAL COVENANTS OF PUBLIC BODY

Section 5.1. Information. The Public Body shall deliver to the Borrower and the Lender, not less than 180 days after the end of each fiscal year, an electronic copy of the Public Body's annual financial statements prepared in accordance with generally accepted accounting principles and otherwise in form and substance satisfactory to the Lender, which financial statements shall be accompanied by an audit report resulting from an audit conducted by a firm of independent certified public accountants in conformity with generally accepted auditing standards. The Public Body also shall promptly provide the Borrower and the Lender (1) upon receipt thereof, a copy of each other report submitted to the Public Body by its accountants in connection with any annual, interim, or special audit made by them of the books of the Public Body (including, without limitation, any management report prepared in connection with such accountants' annual audit of the Public Body) and (2) with such other information relating to the Public Body as the Lender may reasonably request from time to time. The Public Body shall keep accurate and complete records and books of account with respect to its activities in which proper entries are made in accordance with generally

accepted accounting principles reflecting all of its financial transactions. The Lender and the Borrower shall also have the right at all reasonable times to examine and make extracts from the books and records of the Public Body, insofar as necessary to ascertain compliance with this Contract, and to discuss with the Public Body's officers, employees, accountants, and engineers the Public Body's activities, assets, liabilities, financial condition, results of operations, and financial prospects.

Section 5.2. Cooperation. The Public Body shall cooperate in all appropriate respects with the Borrower with respect to any authorizations, approvals, licenses, permits, franchises, privileges, consents, reviews, legal clearances, and orders under federal, state, or local laws and from federal, state, or local entities or officers that are necessary or advisable to facilitate the ownership and operation by the Borrower of its environmental facilities and to permit full compliance with all covenants, agreements, and obligations of the Public Body and the Borrower under the Loan Agreement or this Contract and any document collateral thereto to which the Public Body or the Borrower is a party.

ARTICLE VI

SPECIAL COVENANTS OF THE BORROWER

Section 6.1. Information. The Borrower shall furnish to the Public Body all information furnished to the Lender pursuant to Section 10(a) of the Loan Agreement, contemporaneously with the delivery of such information to the Lender.

Section 6.2. Monthly Financial Information. If requested by the Public Body, the Borrower will furnish to the Public Body unaudited monthly financial statements showing its income and expenses in reasonable detail.

ARTICLE VII

MISCELLANEOUS

Section 7.1. Entire Contract; Amendments. This Contract contains the entire agreement of the Public Body and the Borrower relating to the matters covered by this Contract. No representation, promise, or understanding has been made, and no collateral agreement, stipulation, or undertaking exists, which will have any force and effect with respect to the matters covered by this Contract except as set forth in this Contract. This Contract may not be amended, changed, modified, altered, or terminated except with the prior written consent of the Lender.

Section 7.2. Notices. All notices, certificates, requests, demands, or other communications hereunder shall be sufficiently given and shall be deemed given upon receipt, by hand delivery, mail, overnight delivery, telecopy, or other electronic means, addressed as provided at the beginning of this Contract. Any party to this Contract

may, by notice given to the other party, designate any additional or different addresses to which subsequent notices, certificates, or other communications shall be sent. For purposes of this Section, "electronic means" shall mean telecopy or facsimile transmission or other similar electronic means of communication that produces evidence of transmission.

Section 7.3. Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the Borrower, the Public Body, and their respective successors and assigns, subject, however, to the limitations contained in this Contract.

Section 7.4. Severability. If any provision of this Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Contract shall not affect the remaining portions of this Contract or any part thereof.

Section 7.5. Execution Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.6. Captions. The captions and headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

Section 7.7. Governing Law. This Contract and the rights and obligations of the parties hereto (including third party beneficiaries) shall be governed, construed, and interpreted according to the laws of the State of Georgia.

[Signatures and Seals to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed and delivered by their respective officials hereunto duly authorized as of the date first above written.

«BORROWER_NAME»

Signature: _____

Print Name: _____

Title: _____

(SEAL)

Attest Signature: _____

Print Name: _____

Title: _____

«PUBLIC_BODY_NAME»

Signature: _____

Print Name: _____

Title: _____

(SEAL)

Attest Signature: _____

Print Name: _____

Title: _____

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OPINION OF PUBLIC BODY'S COUNSEL

(Please furnish this form on Attorney's Letterhead)

DATE

«LENDER_NAME»

233 Peachtree Street, N.E.
Harris Tower, Suite 900
Atlanta, Georgia 30303

Ladies and Gentlemen:

As counsel for «**PUBLIC_BODY_NAME**» (the "Public Body"), I have examined a duly executed original of the Environmental Facilities Agreement (the "Contract"), Loan/Project No. «**Loan_No**», between the Public Body and «**BORROWER_NAME**» (the "Borrower"), the proceedings taken by the Public Body to authorize the Contract, and such other documents, records, and proceedings as I have deemed relevant or material to render this opinion, and based upon such examination, I am of the opinion, as of the date hereof, that:

1. The Public Body is a public body corporate and politic, duly created and validly existing under the laws of the State of Georgia.

2. The Contract has been duly authorized, executed, and delivered by the Public Body and is the legal, valid, and binding obligation of the Public Body, enforceable in accordance with its terms.

3. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way questioning or affecting the validity of the Contract.

4. To the best of my knowledge, the execution, delivery, and performance by the Public Body of the Contract will not conflict with, breach, or violate any law, any order or judgment to which the Public Body is subject, or any contract to which the Public Body is a party.

5. The signatures of the officers of the Public Body that appear on the Contract are true and genuine. I know such officers and know them to be the duly elected or appointed qualified incumbents of the offices of the Public Body set forth below their names.

With your permission, in rendering the opinions set forth herein, I have assumed the following, without any investigation or inquiry on my part:

- (i) the due authorization, execution, and delivery of the Contract by the Borrower; and
- (ii) that the Contract constitutes the binding obligation of the Borrower and that the Borrower has all requisite power and authority to perform its obligations thereunder.

The enforceability of the Contract (i) may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and other similar laws affecting the enforcement of creditors' rights, (ii) may be subject to general principles of equity, whether applied by a court of law or equity, and (iii) may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

Signature

Printed Name

Date

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EXTRACT OF MINUTES
RESOLUTION OF GOVERNING BODY

Public Body: «PUBLIC_BODY_NAME»

Loan Number: «Loan_No»

At a duly called meeting of the governing body of the Public Body identified above (the "Public Body") held on the ____ day of _____, the following resolution was introduced and adopted.

WHEREAS, in order to facilitate the acquisition, construction, and installation of additions, extensions, or improvements to the environmental facilities of «BORROWER_NAME» (the "Borrower") and in order to make the Borrower's environmental facilities and services available to residents of the Public Body the governing body of the Public Body has determined to agree to make payments to the Borrower in amounts sufficient to enable the Borrower to repay a loan made to the Borrower by «LENDER_NAME», in the event the Borrower has insufficient funds to repay such loan, pursuant to the terms of an Environmental Facilities Agreement (the "Contract") between the Borrower and the Public Body, the form of which has been presented to this meeting;

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Public Body that the form, terms, and conditions and the execution, delivery, and performance of the Contract are hereby approved and authorized.

BE IT FURTHER RESOLVED by the governing body of the Public Body that the terms of the Contract are in the best interests of the Public Body for making the Borrower's environmental facilities and services available to residents of the Public Body, and the governing body of the Public Body designates and authorizes the following persons to execute and deliver, and to attest, respectively, the Contract and any related documents necessary to the consummation of the transactions contemplated by the Contract.

(Name of Person to Execute Documents) (Title)

(Name of Person to Attest Documents) (Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect.

Dated: _____

Secretary/Clerk

(SEAL)